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IN THE

Supreme Court of the United States

October Term, 1949

No. 205

D. LEE ANDREWS, *Petitioner,*

v.

HAMILTON COUNTY HOSPITAL, et al,

Respondents.

Respondents' Brief In Opposition To Motion To Dispense With Printing The Record; and Respondents' Offer To Stipulate Regarding The Printing Of The Record.

Respondents intend to file a brief in opposition to the petition for a writ of certiorari. They cannot consent and stipulate that the printing of the record be dispensed with. The fact that the Respondents maintain that the Statement of Facts contained in the petition is inaccurate and insufficient impells them to oppose the motion for the following reasons:

1.

The statement in the petition, pages 1 to 6, purports to set out the facts in the case, but there will be a sharp conflict on the question as to whether or not the statement is a correct statement of the facts. That question can be determined only

by reference to the record. There will therefore be immediate need for all who read the Petition and the Brief in opposition to it to have recourse to the record to determine which of the conflicting statements of fact are true.

2.

Some of the statements of fact in the Petitioner's brief which will be challenged are:

(a) That he is a member of the Indiana State Medical Association and a fellow of the American Medical Association. The Respondents will maintain upon this point that the Petitioner did not know whether or not he was a member of these associations, but that he had no evidence that he was.

(b) That his educational qualifications to practice medicine have never been questioned by any hospital. The fact is that the Hamilton County Hospital in this case questioned his educational qualifications to practice major surgery, which is a specialty in the practice of medicine. The Respondents presented that very question in this case,—and the Indiana Supreme Court said:

"* * * it is our opinion that the Appellee is not qualified. * * * to perform surgery in the hospital."

(c) That the performance by the Petitioner of the number of operations mentioned on page 3, show competency as a surgeon, which that statement was obviously intended to show. In this connection additional citations will be made to the record of evidence that competency in the performance of surgery cannot be determined by the number of operations performed,—for if they were performed on people of strength and vitality and particularly on people who

did not need the operations, the patients would be likely to recover no matter how bungling the surgery was.

(d) That the Petitioner was refused permission to admit patients because of his lack of membership in the Society. Respondents' Brief will show that refusal was based upon his failure to conform to the rules which, so far as they pertained to educational requirements for performing surgery, the Indiana Supreme Court found were reasonable, and under which he could not qualify as a surgeon because of lack of training. So far as any refusal to admit the Petitioner because of non-membership in the Society ever was involved in this case, the point has been decided by the Indiana Supreme Court in its holding that the requirement of membership in the Society was unreasonable and could not be enforced.

3.

A fuller statement of facts will be included in the Respondents' Brief in opposition to the petition; and to satisfy the rules of this Court citation to the record in support of the additional facts must be made. The rules of this Court require that ten copies of the printed record be furnished at the time the petition is presented. (Rule 38.7) This apparently has not been done, for the petition on page 1, speaks only of "a transcript of the record" being furnished. In view of the nature of the questions of fact to be decided, which are presented in the petition and which will be presented in the brief of Respondents, one copy of the record is not adequate for use both in the briefing and in the consideration of the case by the Court. The attorneys for the Respondents, having no copy of the record, would have to rely, when they write their brief, upon their own memory concerning the record and upon the statement of the record as it is condensed in their brief on appeal to the Appellate

Court of Indiana and in subsequent briefs in connection with the transfer to the Indiana Supreme Court. That is not satisfactory, for it makes it impossible to cite the record accurately in support of their statements of facts in the record.

For the foregoing reasons the Respondents oppose the motion to dispense with the printing of the record, or at least with the printing of the ten copies of the record required by the rules of this Court to accompany the Petition for a writ of certiorari.

OFFER TO STIPULATE REGARDING PRINTING OF THE RECORD

The Respondents are willing to co-operate with the Petitioner in avoiding expense and reducing to the utmost the amount of printing of the record that would be required. They therefore offer to stipulate that it will be sufficient to present all the questions in this case to print as the record only the following:

> That part of the Appellants' Brief filed in the Appellate Court of Indiana contained under the title "Concise Statement of the Record," which begins on page 4 and ends on page 163.

This offer, although suggesting the inclusion only of the statement prepared by the Respondents as the correct statement of the record, is a fair offer, as will now be shown:

1. Under the rules of Appellate procedure in Indiana the Appellant is required to include in his brief a concise statement of the record. Then if that statement is not satisfactory to the Appellee, the Appellee may add to it or point out wherein the statement is insufficient or inadequate. In this case the Petitioner, as Appellee in the Appellate Court, made

this statement regarding the Appellants' statement of the record contained in the Appellants' Brief:

> "Appellants' statement of the record is substantially complete and correct and sufficient to permit the presentation of questions pertaining to the alleged errors."

There were no corrections offered nor any points questioned by the Appellee regarding the Appellants' statement of the record.

2. The statement of the record contained in Appellants' Brief is typed in double space pica type, and there are about 175 words to the page in the 159 pages. This could all be printed in conformity with the rules of the United States Supreme Court in probably less than 70 pages. This would reduce the printing bill to where it would be no serious burden.

3. The statement of the record from Appellants' Brief includes the pleadings, the action of the court and a narrative recital of the evidence of each witness. Nothing that would be needed for the consideration of this case would be left unprinted if this stipulation is accepted. The decisions of the Indiana Supreme Court on the merits and on the denial of petition for rehearing, and the dates thereof, are already printed as Appendix A of the Petition for the writ.

In event this offer to stipulate is accepted and the printed record is supplied, the Respondents will have to ask for an enlargement of time within which to file their brief in opposition to the petition for the writ of certiorari, unless the printed record is available promptly. If they ask for such

enlargement it will be for thirty days after the receipt by them of the printed record.

RESPECTFULLY SUBMITTED,

ALBERT STUMP,
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